

# WATER SERVICE AREA REVIEW BOARD (WSARB)



Wednesday, April 29, 2015, 9:00 a.m.  
City Hall, 1<sup>st</sup> Floor, East Conference Room  
255 W Alameda, Tucson, AZ 85701

## Summary Minutes

1. **Roll Call:** The meeting was called to order by Chairperson Ernie Duarte at 9:03 a.m. Those present were:

### **WSARB Members present:**

Ernie Duarte	Director, Planning and Development Services (Chair)
Albert Elias	Assistant City Manager
Nicole Ewing-Gavin	Director, Office of Integrated Planning

### **Appellant:**

John Whitthorne	Parcel owner, 5350 W Crestview Dr
Sharon Whitthorne	Parcel owner, 5350 W Crestview Dr

### **Representing Tucson Water:**

Richard Sarti	Engineering Manager, Tucson Water
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### **Others Present:**

Maurice Farwagi	Parcel owner, 5270 W Crestview Dr
Karilyn Roach	Community Water Coalition
Chris Avery	Assistant Attorney, City of Tucson
Katie Bolger	Council Aide, Ward 2
Melodee Loyer	Chief Planner, Tucson Water
Andrew Greenhill	Management Coordinator, Tucson Water
Johanna Hernandez	Staff Assistant, Tucson Water
Kris LaFleur	Staff Assistant, Tucson Water

2. **Announcements:** There were no announcements.
3. **Review and Approval of Amended LAR and Minutes from 4/6/2015:** Member Elias moved to approve the Legal Action Report and Meeting Minutes of April 6, 2015. The motion was seconded by Member Ewing-Gavin. Chairperson Duarte requested that the minutes be corrected to reflect an adjournment time of 11:20 a.m., rather than 11:20 p.m. The motion was carried by a vote of 3-0.
4. **Water Service Request – 5350 W Crestview Dr:** Mr. Sarti presented Tucson Water's report to the Board. He indicated that the parcel is within Tucson Water's service area but does not meet the Water Service Area Policy (WSAP) infill requirements, which state that, to receive new service, a parcel must be surrounded on three adjacent sides by parcels currently being served by Tucson Water. Mr. Sarti explained that Tucson Water is obligated to serve the adjacent parcels south and east of 5350 W Crestview, but these represent only two adjacent sides. The parcels north and west of 5350 W Crestview are in the Lazy C Water Company service area.

Mr. and Mrs. Whitthorne presented their case to the Board. Mrs. Whitthorne read a statement to the Board [this statement accompanies the Legal Action Report]. Mrs. Whitthorne indicated that

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she and her husband had requested water service from Lazy C Water Company, as previously recommended by the WSARB, but the Company declined to serve the property. She indicated that neighboring parcels to the south and east had received Tucson Water service, and that the couple and their neighbors believed an unused connection at 5270 W Crestview was intended to serve 5350 W Crestview. Mrs. Whitthorne explained that the couple wished to sell the property, in which they had extensively invested, and now faced a devastating hardship due to an inability to receive water service.

Chairperson Duarte issued a Call to the Audience for comments specific to the case. [The audience statements that follow were made to the Board out of order, during the Appellant's Response.]

Mr. Farwagi, owner of 5270 W Crestview Dr [south of 5350], addressed the Board. He indicated that the meter serving his property is remote from the parcel. He indicated that two unused water connections are located next to his meter, and believes one was intended to serve 5350 W Crestview. Mr. Farwagi stated that he had approached the Whitthornes to jointly run power and other utilities to their parcels. Mr. Farwagi expressed support for the Whitthornes' request for water service, and asked the Board to consider the appellants' many years of community contributions.

Ms. Roach of the Community Water Coalition addressed the Board. She asked the Board to abide by the powers granted to it by Mayor and Council [Ordinance 11106]. She indicated that the Board was responsible for determining if Tucson Water had properly applied the WSAP in its denial of service. She stated that the Board could recommend changes to the Policy, but could not reverse Tucson Water's decision if the Policy had been properly applied.

The Board began deliberation. Ms. Ewing-Gavin stated that the Board's role is to determine if Tucson Water's denial of service was correctly applied, and indicated that it had been in this case. She stated that, if the Board determined there was further rationale for delivering service, it could make that recommendation to Mayor and Council. Mr. Duarte agreed that the Board could not grant water service if Tucson Water had properly applied the Policy, but could make a recommendation to Mayor & Council.

Mr. Avery elaborated on the Whitthornes' case. [These comments took place during the Call to Audience.] Mr. Avery explained that, had Lazy C opted to serve the Whitthornes, the Arizona Corporation Commission would have allowed it. However, the ACC cannot force a water provider to expand service beyond its existing service area. Although the parcel is adjacent to private land, Mr. Avery concluded, water service from that land is unavailable.

Mr. Sarti indicated that the parcels south and east of 5350 W Crestview had received service due to factors outside of the current WSAP. The parcel at 5220 W Crestview [east of the subject parcel] has physical frontage on Tucson Water's main. Because a service stub from the main exists on the property, Tucson Water is obligated to serve the property. The parcel at 5270 W Crestview [south of the subject parcel] does not have frontage on the water main, but a remote meter was installed in 1970. Tucson Water discontinued the use of remote meters in 2009, and this option is not available for the Whitthorne parcel.

Ms. Ewing-Gavin asked Mr. Sarti what would happen if water service was granted to the Whitthornes, given Tucson Water's current policy on remote meters. Extensive discussion ensued regarding easements, water main extensions, and potential property line reconfigurations that would create water main frontage for the Whitthorne parcel.

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Ms. Ewing-Gavin inquired about the typical home's annual water usage. Mr. Avery indicated that an average accepted figure is 1/4 to 1/3 acre-foot per year.

Ms. Ewing-Gavin asked if granting service to the Whitthorne parcel would set a precedent for granting service to other parcels. Mr. Avery indicated that there would be no possibility of a "domino effect," due to the Lazy C Water Company boundary north and west of the parcel.

Ms. Ewing-Gavin moved to forward to Mayor and Council a recommendation to grant water service to 5350 W Crestview Dr. based on the following:

- Service would represent a minimal additional volume of water use
- Infrastructure extension costs would be borne by the parcel owners
- Service would help to correct the remote meter problem at the parcel
- Service would support the concept of a rational Water Service Area boundary

Member Elias seconded the motion. Discussion ensued.

Member Elias advised that the Appellants could potentially purchase neighboring property [to create water main frontage] and reapply for Tucson Water service prior to the appearance of their case before Mayor & Council [tentatively June 9]. He indicated that this option could make an appeal to Mayor & Council moot.

Chairperson Duarte noted that Tucson Water had properly applied the WSAP in this case. He noted that the Board had previously heard an appeal of this case [Feb. 5, 2015], and had directed the Appellants to approach Lazy C Water Co for service. He indicated that they had done so, and returned to the Board with new information.

Member Elias also noted that the Policy was properly applied by Tucson Water staff. He explained that new information in the case includes a remote meter situation, and the Appellants' inability to obtain service from Lazy C.

The Board voted and the motion carried, 3-0.

- 5. Review of Proposed Changes to Water Service Area Policy:** Ms. Hernandez presented to the Board for review and comment a set of proposed administrative changes to the WSAP. These included the codification of timeframes for applicants to file appeals and for staff to schedule WSARB hearings, specification of WSARB support staff, and the process for appellant appeals to Mayor & Council.

Modifications to the WSAP "3-Side Rule" were proposed for certain situations in which a parcel is bounded on one or more adjacent sides by "undevelopable land."

Member Elias requested additional information from staff regarding the development potential and the number of potential parcels affected by changes to the 3-Side Rule. Member Ewing-Gavin expressed concern that changes to the Rule could contribute to a "domino effect."

Ms. Roach requested permission to address the Board. She cautioned the Board against making Policy changes that could affect multiple parcels, without having GIS data to understand the potential impact of such changes.

Chairperson Duarte expressed support for Staff's proposed administrative changes to the WSAP; he indicated that substantive changes would need to be approved by Mayor & Council. He recommended that Staff consult with CWAC on the proposed changes. Mr. Avery indicated that Staff would work to obtain data to illustrate the potential impact of proposed changes. Member Elias also expressed support for the proposed administrative changes.

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Members recommended that Tucson Water staff assume responsibility for scheduling appeals to Mayor & Council, if requested to do so by Appellants, following a WSARB denial of service.

- 6. Establishment of WSARB Meeting Schedule:** Staff and Members briefly discussed the coordination of schedules in order to establish a standing monthly meeting time for WSARB meetings.
- 7. Call to the Audience:** Ms. Bolger reminded those present of the difficult and lengthy political process for establishing the WSAP and subsequent refinements. She encouraged Tucson Water staff to engage Council members regarding any proposed changes to the policy. Ms. Bolger pointed out that the Board had just made its first water service recommendation to Mayor & Council, and expressed great concern that Member Ewing-Gavin had cited “minimal amount of water use” and “developer funding” as bases that recommendation. She stated that these criteria were not aligned with the WSAP or its refinements, and warned that the criteria represent a potential precedent for future Board recommendations. Ms. Bolger asked all present to tread carefully, and asked the Board to filter future cases that may appear before Mayor & Council.
- 8. Adjournment:** The meeting was adjourned at 10:11 a.m.

**Approved 9/29/15**